

ASSEMBLY BILL

No. 2220

Introduced by Assembly Member Vargas

February 22, 2006

An act to amend Sections 5133, 5134, 5142, 5258, and 5285 of, and to add Section 5192 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2220, as introduced, Vargas. Household goods carriers.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including transportation companies. Household goods carriers are subject to the jurisdiction and control of the commission under the Household Goods Carriers Act. The act prohibits a household goods carrier from engaging, or attempting to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in the state, including advertising, soliciting, offering, or entering into an agreement, without a permit issued by the commission authorizing transportation entirely within the state, or a valid operating authority issued by the Federal Motor Carrier Safety Administration, for interstate transportation.

Except as specified, a household goods carrier in compliance with this act has a lien on used household goods and personal effects to secure payment of an amount, determined as specified, for transportation and additional services ordered by the consignor, as defined. The act requires any person having possession or control of used household goods or personal effects, who knows, or through the exercise of reasonable care should know, that the household goods

carrier has been tendered that amount, to release the household goods and personal effects upon the request of the consignor or consignee.

This bill would also impose a similar release requirement on any person having possession or control of used household goods or personal effects, who knows, or through the exercise of reasonable care should know, that a household goods carrier transported those household goods or personal effects in violation of that permit or valid operating authority requirement. The bill would, with respect to both release requirements, authorize a peace officer, as defined, if the person fails to release the household goods and personal effects, to take custody of the household goods and personal effects and release them to the consignor or consignee.

(2) The act requires an application for a transportation permit to be in writing, verified under oath, and to be in a form, contain information, and be accompanied by proof of service upon those interested parties, as required by the commission.

This bill would require the commission to require the applicant to attest in the application to facts demonstrating that the applicant is not barred by law or court order from acting as a household goods carrier.

(3) The act requires the commission to establish or approve rates to be charged by household goods carriers for the transportation of used household goods and personal effects and for related services, as prescribed.

This bill would prohibit a household goods carrier from advertising, quoting, or charging a rate or an amount for the transportation of used household goods and personal effects that is based on the amount of cubic feet or other volumetric unit measurement of those household goods and effects. Under the bill, a household goods carrier that violates that prohibition would not be entitled to any compensation for the transportation of the household goods and effects and would be required to make restitution to the shipper of any compensation collected.

(4) The act authorizes the commission to amend or revoke, in whole or in part, the permit of any household goods, upon application of the permit holder, or to suspend, change, or revoke, in whole or in part, such a permit, upon complaint or on the commission's own initiative, after notice and opportunity to be heard, for failure to comply with the act, any order, rule, or regulation of the commission, or any term, condition, or limitation of the permit. The act authorizes the commission to cancel, suspend, or revoke the permit of any carrier

upon the conviction of the carrier for any misdemeanor or for listed felonies.

This bill would authorize permit suspension, change, or revocation for providing false or misleading information on a permit application, and would expand the listed felonies. Under the bill, if a carrier is convicted of a prescribed felony, as defined, the permit of the carrier would be deemed automatically revoked, and if an officer, director, or managing agent is so convicted, the permit would be deemed automatically suspended for five years. The bill would authorize the commission, in the case of automatic suspension, to reinstate the permit, extend the suspension, or revoke the permit, as prescribed. The bill would prohibit an officer, director, managing agency, or employee of the carrier convicted of a prescribed felony from serving in any other capacity with a carrier.

(5) Under the act, every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of the act, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, punishable as prescribed.

This bill would make it a violation of the act to hire, retain, or otherwise allow a person who has been convicted of a prescribed offense to serve in any capacity with the carrier.

(6) By establishing new violations of the act, which would be a misdemeanor, this bill would create new crimes, thereby imposing a state-mandated local program.

(7) The act authorizes the commission, as an alternative to the cancellation, revocation, or suspension of an operating permit, to impose a fine not to exceed \$20,000.

This bill would raise the authorized fine limit to \$50,000.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5133 of the Public Utilities Code is
2 amended to read:
3 5133. (a) No household goods carrier shall engage, or
4 attempt to engage, in the business of the transportation of used
5 household goods and personal effects, by motor vehicle over any
6 public highway in this state, including advertising, soliciting,
7 offering, or entering into an agreement regarding the
8 transportation of used household goods and personal effects,
9 unless the following is satisfied:
10 (1) For transportation of household goods and personal effects
11 entirely within this state, there is in force a permit issued by the
12 commission authorizing those operations.
13 (2) For transportation of household goods and personal effects
14 from this state to another state or from another state to this state,
15 there is in force a valid operating authority issued by the Federal
16 Motor Carrier Safety Administration.
17 (b) A household goods carrier that engages, or attempts to
18 engage, in the business of the transportation of used household
19 goods and personal effects in violation of subdivision (a) may not
20 enforce any security interest or bring or maintain any action in
21 law or equity to recover any money or property or obtain any
22 other relief from any consignor, consignee, or owner of
23 household goods or personal effects in connection with an
24 agreement to transport, or the transportation of, household goods
25 and personal effects or any related services. A person who
26 utilizes the services of a household goods carrier operating in
27 violation of subdivision (a) may bring an action in any court of
28 competent jurisdiction in this state to recover all compensation
29 paid to that household goods carrier.
30 (c) The operation of a motor vehicle used in the business of
31 transporting household goods and personal effects by a
32 household goods carrier that does not possess a valid permit or
33 operating authority, as required by subdivision (a), constitutes a

1 public nuisance. Any peace officer, as defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2 of the Penal
3 Code, may remove any motor vehicle located within the
4 territorial limits in which the officer may act, when the vehicle is
5 found upon a highway and is being used in a manner constituting
6 a public nuisance. At the request of the commission, the Attorney
7 General, district attorney, city attorney, or county counsel, the
8 law enforcement agency may impound the vehicle for a period
9 not to exceed 72 hours to enable the requesting agency to abate
10 the public nuisance, to obtain an order from the superior court of
11 the county in which the vehicle has been impounded to prevent
12 the use of the motor vehicle in violation of law, and to obtain any
13 other remedy available under law as permitted by Section 5316.

14 *(d) Any person having possession or control of used household*
15 *goods or personal effects, who knows, or through the exercise of*
16 *reasonable care should know, that a household goods carrier*
17 *transported those household goods or personal effects in*
18 *violation of subdivision (a), shall release the household goods*
19 *and personal effects to the consignor or consignee, as defined in*
20 *Section 5142, upon the request of the consignor or consignee. If*
21 *that person fails to release the household goods and personal*
22 *effects, any peace officer, as defined in subdivision (c), may take*
23 *custody of the household goods and personal effects and release*
24 *them to the consignor or consignee.*

25 SEC. 2. Section 5134 of the Public Utilities Code is amended
26 to read:

27 5134. Application for ~~permits~~ *a permit* shall be in writing,
28 verified under oath, and shall be in ~~such a~~ form, contain ~~such~~
29 information, and be accompanied by proof of service upon ~~such~~
30 *those* interested parties, as *required* by the commission ~~requires~~.
31 *The commission shall require the applicant to attest in the*
32 *application to facts demonstrating that the applicant is not*
33 *barred by law or court order from acting as a household goods*
34 *carrier.*

35 SEC. 3. Section 5142 of the Public Utilities Code is amended
36 to read:

37 5142. (a) Except as provided in Section 5133, a household
38 goods carrier in compliance with this chapter has a lien on used
39 household goods and personal effects to secure payment of the
40 amount specified in subdivision (b) for transportation and

1 additional services ordered by the consignor. No lien attaches to
2 food, medicine, or medical devices, items used to treat or assist
3 an individual with a disability, or items used for the care of a
4 minor child.

5 (b) (1) The amount secured by the lien is the maximum total
6 dollar amount for the transportation of the household goods and
7 personal effects and any additional services (including any bona
8 fide change order permitted under the commission's tariffs) that
9 is set forth clearly and conspicuously in writing adjacent to the
10 space reserved for the signature of the consignor and that is
11 agreed to by the consignor before any goods or personal effects
12 are moved from their location or any additional services are
13 performed.

14 (2) The dollar amount for the transportation of household
15 goods and personal effects and additional services may not be
16 preprinted on any form, shall be just and reasonable, and shall be
17 established in good faith by the household goods carrier based on
18 the specific circumstances of the services to be performed.

19 (c) Upon tender to the household goods carrier of the amount
20 specified in subdivision (b), the lien is extinguished, and the
21 household goods carrier shall release all household goods and
22 personal effects to the consignee.

23 (d) Any person having possession or control of household
24 goods or personal effects, who knows, or through the exercise of
25 reasonable care should know, that the household goods carrier
26 has been tendered the amount specified in subdivision (b), shall
27 release the household goods and personal effects *to the consignor*
28 *or consignee*, upon the request of the consignor or consignee. *If*
29 *the person fails to release the household goods and personal*
30 *effects to the consignor or consignee, any peace officer, as*
31 *defined in subdivision (c) of Section 5133, may take custody of*
32 *the household goods and personal effects and release them to the*
33 *consignor or consignee.*

34 (e) Nothing in this section affects any rights, if any, of a
35 household goods carrier to claim additional amounts, on an
36 unsecured basis, or of a consignor or consignee to make or
37 contest any claim, and tender of payment of the amount specified
38 in subdivision (b) is not a waiver of claims by the consignor or
39 consignee.

1 (f) Any person injured by a violation of this section may bring
2 an action for the recovery of the greater of one thousand dollars
3 (\$1,000) or actual damages, injunctive or other equitable relief,
4 reasonable attorney's fees and costs, and exemplary damages of
5 not less than three times the amount of actual damages for a
6 willful violation.

7 (g) Any waiver of this section shall be void and unenforceable.

8 (h) Notwithstanding any other law, this section exclusively
9 establishes and provides for a household goods carrier's lien on
10 used household goods and personal effects to secure payment for
11 transportation and additional services ordered by the consignor.

12 (i) For purposes of this section, the following terms have the
13 following meaning:

14 (1) "Consignor" means the person named in the bill of lading
15 as the person from whom the household goods and personal
16 effects have been received for shipment and that person's agent.

17 (2) "Consignee" means the person named in the bill of lading
18 to whom or to whose order the household goods carrier is
19 required to make delivery as provided in the bill of lading and
20 that person's agent.

21 SEC. 4. Section 5192 is added to the Public Utilities Code, to
22 read:

23 5192. A household goods carrier shall not advertise, quote, or
24 charge a rate or an amount for the transportation of used
25 household goods and personal effects that is based on the amount
26 of cubic feet or other volumetric unit measurement of those
27 household goods and effects. In addition to any other remedy, a
28 household goods carrier that violates this section shall not be
29 entitled to any compensation for the transportation of the
30 household goods and effects and shall make restitution to the
31 shipper of any compensation collected.

32 SEC. 5. Section 5258 of the Public Utilities Code is amended
33 to read:

34 5258. No person shall be excused from attending and
35 testifying or from producing any book, document, paper, or
36 account in any investigation or inquiry by or hearing before the
37 commission or any commissioner or examiner, or in obedience to
38 the ~~subpoena~~ *subpoena* of the commission, or in any cause or
39 proceeding, criminal or otherwise, based upon or growing out of
40 any alleged violation of any of the provisions of this chapter,

1 when ordered to do so, upon the ground ~~that the testimony or~~
2 ~~evidence, book, document, paper, or account required of him~~
3 ~~may tend to incriminate him or subject him to penalty or~~
4 ~~forfeiture, but no person shall be prosecuted, punished, or~~
5 ~~subjected to any penalty or forfeiture for or on account of any~~
6 ~~act, transaction, matter, or thing concerning which, under oath,~~
7 ~~he has testified or produced documentary evidence before the~~
8 ~~commission, or in obedience to its subpoena, or in any such cause~~
9 ~~or proceeding of that person's privilege against~~
10 ~~self-incrimination, but if the privilege applies and the person~~
11 ~~claiming the privilege has properly asserted it, no information~~
12 ~~disclosed or any evidence derived from that information shall be~~
13 ~~used against that person in any criminal proceeding .~~ No person
14 so testifying shall be exempt from prosecution or punishment for
15 any perjury committed by ~~him~~ *that person* in his or her
16 testimony.

17 SEC. 6. Section 5285 of the Public Utilities Code is amended
18 to read:

19 5285. (a) *The commission may suspend the permit of any*
20 *household goods carrier* ~~may be suspended~~ after notice and an
21 opportunity to be heard, if the carrier knowingly and willfully
22 files a false report ~~which that~~ understates revenues and fees.

23 (b) *The commission may amend or revoke, in whole or in part,*
24 *the permit of any household goods carrier* ~~may~~, upon application
25 of the *permit holder thereof*, ~~be amended or revoked, in whole or~~
26 ~~in part, or may suspend, change, or revoke, in whole or in part,~~
27 *such a permit*, upon complaint or on the commission's own
28 initiative, after notice and opportunity to be heard, ~~be suspended,~~
29 ~~changed, or revoked, in whole or in part, for providing false or~~
30 *misleading information on an application for a permit or for*
31 *failure to comply with any provision of this chapter or with any*
32 *order, rule, or regulation of the commission or with any term,*
33 *condition, or limitation of the permit.* A household goods carrier
34 ~~which that~~ requests a hearing within 30 days after *the date of*
35 receiving the notice and opportunity to be heard shall be granted
36 a hearing. *The commission may suspend the right to operate*
37 *under any household goods carrier permit* ~~may be suspended by~~
38 ~~the commission~~, upon reasonable notice of not less than 15 days
39 to the holder without hearing or other proceedings, for failure to

1 comply, and until compliance, with Section 5161 or with any
2 order, rule, or regulation of the commission.

3 (c) As an alternative to the cancellation, revocation, or
4 suspension of an operating permit or permits, the commission
5 may impose upon the holder of the permit or permits a fine of not
6 more than ~~twenty~~ fifty thousand dollars ~~(\$20,000)~~ (\$50,000). All
7 fines collected shall be deposited at least once each month in the
8 State Treasury to the credit of the General Fund.

9 (d) The commission may cancel, suspend, or revoke the permit
10 of any carrier upon the conviction of the carrier of any
11 misdemeanor under this chapter while holding operating
12 authority issued by the commission, or the conviction of the
13 carrier or *any of its officers* of a felony while holding operating
14 authority issued by the commission, limited to robbery, burglary,
15 ~~larceny~~ *any form of theft, any form of fraud, extortion,*
16 *embezzlement, money laundering, forgery, false statements,*
17 *computer crimes, including violations of Section 502 of the Penal*
18 *Code, an attempt to commit any of the offenses described in this*
19 *subdivision, aiding and abetting or conspiring to commit any of*
20 *the offenses described in this subdivision, or intentional*
21 *dishonesty for personal gain.*

22 (e) (1) *As used in this subdivision, "convicted of a prescribed*
23 *felony" means a plea or verdict of guilty or a conviction*
24 *following a plea of nolo contendere for any felony described in*
25 *subdivision (d) in connection with or arising from a transaction*
26 *for the transportation of used household goods or personal*
27 *effects, or for an attempt, aiding and abetting, or conspiring to*
28 *commit any of those felonies.*

29 (2) *If a carrier is convicted of a prescribed felony, the permit*
30 *of the carrier shall be deemed automatically revoked.*

31 (3) *If an officer, director, or managing agent of the carrier is*
32 *convicted of a prescribed felony, the permit of the carrier shall*
33 *be deemed automatically suspended for a period of five years. If*
34 *the commission determines that the carrier did not have*
35 *knowledge of, participate in, direct, aid and abet, authorize, or*
36 *ratify the conduct of the person convicted and did not in any*
37 *manner benefit from that conduct, the commission may reinstate*
38 *the permit on terms the commission determines to be appropriate*
39 *in the interest of justice and to ensure the protection of the*

1 *public. The commission may also extend the suspension or*
2 *revoke the permit as provided in subdivision (d).*

3 *(4) If an officer, director, managing agent, or employee of the*
4 *carrier is convicted of a prescribed felony, the person may not be*
5 *an officer, director, managing agent, or employee or serve in any*
6 *other capacity with a carrier.*

7 *(5) It is a violation of this chapter for a carrier that knows or*
8 *has reason to know that a person has been convicted of a*
9 *prescribed felony to hire, retain, or otherwise allow that person*
10 *to serve as an officer, director, managing agent, or employee or*
11 *in any other capacity with the carrier.*

12 SEC. 7. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the
17 penalty for a crime or infraction, within the meaning of Section
18 17556 of the Government Code, or changes the definition of a
19 crime within the meaning of Section 6 of Article XIII B of the
20 California Constitution.